

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.429 of 2002

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Manoj Kumar Vishwakarma, son of Late Dudheshwar Vishwakarma, resident of
Village-Mujahara, P.S.-Goh in the District of Aurangabad

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Singh, Advocate

For the State : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date: 07-10-2017

Challenging his conviction under Section 365 of the Indian Penal Code vide Judgment and Order dated 01.08.2002 and 07.08.2002, passed by the Additional Sessions Judge(Fast Track Court No. II), Aurangabad in Sessions Trial No. 328/97/170/2002, arising out of Goh P.S. Case No. 81 of 1996 and sentencing him to undergo 5 years rigorous imprisonment, this appeal has been filed by the appellant.

It is the case of the prosecution that informant Ashok Singh lodged an F.I.R on 08.12.1996 to the effect that on 19.11.1996, he along with his daughter (prosecutrix) aged about 14 years had gone out to ease themselves when on the way accused appellant Manoj Kumar Vishwakarma met her, talked to her and both of them went towards Bigha. It is stated that after the informant came back home and when his daughter did not come till 8-9 A.M, he started searching her in the village and when he reached near the Goh



bus stand, one Rajendra Singh told him that he saw his daughter going away with accused Manoj Kumar Vishwakarma.

It is stated that the First Information Report was lodged and after a period of more than four months, the police received information that prosecutrix and the appellant are residing in Delhi, they were arrested and brought from Delhi and based on the aforesaid, the appellant was prosecuted and holding that the prosecutrix was about 12-13 years of age, the conviction has been ordered only under Section 365 of the Indian Penal Code, as on evidence, no other offence under various other sections were found to have been established.

Learned counsel for the appellant argues that the prosecutrix was between 19-20 years of age as is evident from the medical evidence that has come on record and in this regard, he took me to the statement of the Medical Board which was constituted to ascertain the age of the prosecutrix. Learned counsel took me through the statement of P.W. 8 Dr. Syed Aftab Karim, P.W. 9 Dr. Surendra Prasad, P.W. 10, Dr. Mrs. Nirmala and P.W. 11 Dr. Vikas Kumar Sinha and the medical report given by them being Exhibit-5 and the photocopies thereof marked as Exhibits- 5/1, 5/2, 5/3, 5/4 to say that the Board has given a categorical opinion that the age of the prosecutrix was between 19-20 years and therefore, it is stated that conviction of the appellant is unsustainable.

That apart, he invites my attention to para 19 of



the cross-examination of the prosecutrix who was examined as P.W. 7 to say that she denies about her being abducted or taken to Delhi against her will or wish. On the contrary, she denies of any offence committed by the appellant. Learned counsel argues that learned Trial Court, ignoring all these factual aspects of the matter, the appeal is liable to be allowed.

Even though learned counsel for the State Government refuted the aforesaid contention and points out that the witnesses particularly father of the prosecutrix has suggested the age between 12-13 years on the date of the occurrence, hence conviction should be upheld, I am of the considered view that on a perusal of the record goes to show that learned Trial Court found that apart from the oral testimony of the witnesses, there is no documentary evidence like birth certificate, school leaving certificate or school register to establish the age of the prosecutrix, and therefore, the matter was referred to the Civil Surgeon of the District in question for examination of the prosecutrix by a Medical Board and from a conjoint reading of the statement of the doctors who were examined as P.W. 8 to P.W. 11 along with the report brought on record as Exhibits, 4, 5 and 6 bearing signatures of all the doctors, it has been clearly indicated in this regard that the age of the prosecutrix according to the Doctors of the Board was between 19-20 years. That apart, on a perusal of the statement of the doctor, it is clear that they have conducted various scientific tests to ascertain the age and they



have testified to the effect that they have issued medical report after conducting all the scientific tests. In the statement recorded by P.W. 2, Dr. Surendra Prasad who was medical Officer of Sadar Hospital, Aurangabad, it is clear that various scientific tests as are detailed by him in the statement have been recorded and thereafter the age has been determined as between 19-20 years. Based on this examination, once there is cogent evidence available on record to say that the age of the prosecutrix was between 19-20 years and when the prosecutrix herself does not support the case of the prosecution, the conviction of the appellant cannot be sustained.

Accordingly, the appeal is allowed. The judgment of conviction dated 01.08.2002 and order of sentence dated 07.08.2002 passed by the learned Additional Sessions Judge, Fast Track Court No. II, Aurangabad in Sessions Trial No. 328/97/170/2002 is set aside. The appellant is on bail, hence, he is discharged from the liability of the bail bonds.

(Rajendra Menon, CJ)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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